

### REMARKS

Reconsideration of the application is requested in view of the above amendments and the following remarks. Claims 1, 12, 23, 29, 37 and 43 have been amended. The amendments to the claims are supported by at least Figures 2-6 and the related description of those Figures in the present application. No new matter has been added.

#### § 102 Rejections

Claims 1-3, 5, 7, 11-14, 16, 18, 22, 23, 25, 28, 29, 31, 32, 36, 37, 39, 40, 43, 45, and 46 were rejected under 35 U.S.C. § 102(b) as being anticipated by Pyper (US 1,382,229). Applicant respectfully traverses this rejection.

Pyper discloses a display device having a disk 20 that is rotatable about an axis that is aligned in a horizontal direction. The axis of rotation of the disk 20 is perpendicular to the plane of the front panels of the display device through which images on the rotating disk are viewable. Pyper fails to disclose a front panel oriented in a vertically upright position and a moving member that moves a flame element and is adjustable about a vertical axis that is substantially parallel with the front panel orientation, as required by claims 1 and 29. Pyper also fails to disclose "disposing the flame element viewable to the observer within the chamber through only one of the plurality of enclosed panels, the only one panel having a generally upright vertical orientation," and a flame element that is rotatable about a vertical axis, "the vertical axis being aligned substantially parallel with the upright, vertical orientation of the only one panel" as required by claim 43. Pyper also fails to disclose an enclosure having a plurality of panels defining a chamber and a flame element disposed within the chamber and viewable to the observer through at least one vertically oriented panel of the enclosure, the flame element having a vertical axis of rotation that is aligned substantially parallel with the vertical orientation of the at least one panel of the enclosure, as required by claim 12.

As noted above, the disk 20 having a flame image formed thereon is arranged in a substantially vertical direction and rotates about an axis that is aligned in a generally horizontal direction. Thus, the viewable plane of the disk 20 and the images of the flames on the disk are oriented in a substantially perpendicular direction relative to the axis of rotation. Thus, Pyper

fails to disclose a flame element viewable to the observer, the flame element extending in an upright, vertical direction and a mechanical device coupled to the flame element that concentrically rotates the flame element about a vertical axis of rotation of the mechanical device, the vertical axis of rotation extending in a direction parallel to the upright, vertical direction in which the flame element extends, as required by claim 23. Pyper also fails to disclose an enclosure including a vertically upright oriented front panel, a flame element extending in an upright, vertical direction, and a moving member configured for moving the flame element about a vertical axis that is substantially parallel to the vertically upright orientation of the front panel, as required by claim 29. Pyper also fails to disclose a flame element extending in a generally upright, vertical direction and a moving member configured for moving the flame element about a vertical axis that extends in a direction substantially parallel to the direction in which the flame element extends, as required by claim 37. Therefore, Applicant submits that Pyper fails to disclose every limitation of claims 1, 12, 23, 29, 37 and 43, and the claims that depend from them.

Pyper also discloses veins 31 secured to a periphery of the disk 20. Moving air provided by a fan 29 engages the veins thereby rotating the disk about the horizontal axis. The fan 29 may be positioned along the side, top or bottom walls of the display device to provide moving air in a direction perpendicular to a direction along the axis of rotation of the disk 20. The fan 29 is spaced radially from the axis of rotation of the disk 20 and is configured to direct air in a direction substantially perpendicular to the direction along the axis of rotation in order to contact the veins 31 to rotate disk 20.

Thus, Pyper fails to disclose a blower positioned at an axially spaced apart location from the moving member and from the flame element in a direction along the vertical axis of rotation of the moving member or mechanical device as is required by claims 1, 12, 23, 29 and 43. The Office Action states that "the blower of Pyper would be along, i.e. near or adjacent the vertical axis." Applicant respectfully disagrees with this definition. No definition of the term "along" includes or relates to the terms "near" and "adjacent." One common definition for the term "along" is "in a line parallel with the length or direction of." Webster's Ninth New Collegiate Dictionary. Pyper fails to disclose a blower that meets the limitations of claims 1, 12, 23, 29 and 43.

Claims 1, 12, 23, 29, 37 and 43 have all been amended to clarify that the blower is positioned at a location axially spaced apart from the flame element or moving member in a direction along the vertical axis, or to recite that air or airflow provided by the blower is provided in a direction along the vertical axis of rotation of the flame element or moving member. Because Pyper discloses a blower that is radially spaced apart from the axis of rotation of the moving means or flame element and is oriented in a direction perpendicular rather than in a direction along the length of the axis of rotation, Pyper fails to disclose every limitation of claims 1, 12, 23, 29, 37 and 43 for this additional reason.

Claims 23, 25-28, 43 and 45-48 were rejected under 35 U.S.C. § 102(e) as being anticipated by WO 01/57447 ("447 reference"). Applicant respectfully traverses this rejection.

The '447 reference discloses a flame element 20 that is coupled to moving members 34a, 34b. The flame element 20 extends in a generally upright vertical direction as shown in Figures 1-5. The members 34a, 34b extend in a generally horizontal direction that is perpendicular to the direction in which the flame elements extend. The '447 reference also discloses a transparent panel 10 that is oriented in a upright, vertical position so as to extend in a direction that is perpendicular to the direction in which the moving members 34a, 34b extend.

Therefore, the '447 reference fails to disclose "a mechanical device coupled to the flame element that concentrically rotates the flame element about a vertical axis of rotation of the mechanical device, the vertical axis of rotation extending in a direction parallel to the upright, vertical direction in which the flame element extends," as required by claim 23. The '447 reference also fails to disclose "disposing the flame element viewable to the observer within the chamber through only one of the plurality of enclosure panels, the only one panel having a generally upright, vertical orientation; coupling the flame element to the mechanical structure, the mechanical structure being configured to concentrically rotate the flame element about a vertical axis within the chamber, the vertical access being aligned substantially parallel with the upright, vertical orientation of the only one panel," as require by claim 43. Thus, not only does the '447 reference fail to disclose that the moving members 34a, 34b extend in an upright, vertical orientation, but also fail to disclose that the moving members 34a, 34b extend in a parallel direction to the direction in which the enclosure panel and flame elements extend.

Therefore, the '447 reference fails to disclose every limitation of claims 23 and 43 and the claims that depend from them.

### § 103 Rejections

Claims 8, 9, 19, 20, 26, 27, 33, 34, 41, 42, 47 and 48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pyper in view of Butterfield (US 4,965,707). Applicant respectfully traverses this rejection.

As discussed above, Pyper fails to disclose every limitation of claims 1, 12, 23, 29, 37 and 43. Applicant submits that Pyper also fails to suggest every limitation of these claims as well. Butterfield fails to remedy the deficiencies of Pyper as it relates to claims 1, 12, 23, 29, 37 and 43. Therefore, claims 8, 9, 19, 20, 26, 27, 33, 34, 41, 42, 47 and 48 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 23, 25, 26, 28, 43 and 45-47 were rejected under 35 U.S.C. § 102(e) as being anticipated by Harrison (US 6,461,011) in view of Quigley (US 1,945,072). Applicant respectfully traverses this rejection and notes that there seems to be an error in the recitation of the basis for this rejection. Applicant assumes that 35 U.S.C. §103 is the correct basis for this rejection.

Harrison discloses a flame simulating device that includes a housing 12, an elongate flame-shaped piece of collapsible material 14, a lamp 16, a fan 18, and an inner housing 20. The material 14 maintains a fixed position attached to the top of inner housing 12. Moving there from the fan 18 causes the material 14 to maintain a generally upright position. Harrison fails to disclose or suggest any type of rotating feature or structure.

Quigley discloses a display apparatus that includes a box 2 that supports a small table 7 and an article 8. A motor 23 rotates a worm 22 that engages a worm wheel 21, which in turn rotates a vertical shaft 20 having a pinion 19 coupled to an end thereof. The pinion 19 contacts a gear 18 that is coupled within a non-concentric cavity 17 formed in the table 7. As a result of this configuration, rotation of the shaft 20 causes an eccentric rotation of the table 7 and any display positioned on the table 7 relative to the shaft 20. See page 1, line 94 to page 2, line 6 of

Quigley. Thus, Quigley clearly sets forth a structure that provides non-concentric rotation of the table relative to the shaft 20, which non-concentric rotation is desirable in order to produce a "waltzing movement of any package of goods on support 7 which is most effective in attracting attention from the observer," as recited by Quigley. Claims 23 and 43 require concentric rotation of the flame element about a vertical axis of rotation of the mechanical device/structure. Neither Harrison nor Quigley disclose or suggest such a limitation. Therefore, claims 23 and 43, and the claims that depend from them, are allowable over the art of record.

Claims 27 and 48 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Harrison in view of Quigley and further in view of Butterfield. Applicant respectfully traverses this rejection. As discussed above, Harrison and Quigley fail to disclose or suggest every limitation of claims 23 and 43. Butterfield fails to remedy the deficiencies of Harrison and Quigley as they relate to claims 23 and 43. Therefore, claims 27 and 48 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

Claims 10 and 21 were rejected under 35 U.S.C. § 103(a) as unpatentable over Pyper in view of Hecker. Applicant respectfully traverses this rejection.

As discussed above, Pyper fails to disclose or suggest every limitation of claims 1 and 12. Hecker fails to remedy the deficiencies of Pyper as it relates to claims 1 and 12. Therefore, claims 10 and 21 are allowable for at least the reason they are dependent upon an allowable base claim. Applicant does not concede the correctness of this rejection.

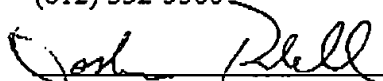
In view of the above, Applicant requests reconsideration of the application in the form of a Notice of Allowance. If a phone conference would be helpful in resolving any issues related to this matter, please contact Applicant's attorney listed below at 612-371-5387.

Respectfully submitted,

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